

that date. The titles the DOH seeks to utilize for this program until December 30, 2025 are:

Administrative Analyst 1
Administrative Analyst 2, Information Systems
Administrative Analyst 4
Administrative Analyst, Fiscal Management
Administrative Director
Advanced Nurse Practitioner
Agency Services Trainee
Analyst Trainee
Certified Medical Assistant
Clinical Laboratory Evaluator
Community Health Worker
Contract Administrator 1
Contract Administrator 2
Data Programmer
Database Analyst 2
Driver
Grant Specialist
Health Data Specialist 2
Health Science Specialist
Inventory Control Specialist
Laboratorian
Laboratory Technician
Laboratory Service Worker
Management Assistant
Management Improvement Specialist
Medical Technologist
Microbiologist 1
Microbiologist 2
Microbiologist 3
Nurse
Patient Access Representative
Principal Laboratory Technician
Program Manager
Program Specialist 1
Public Health Representative 1
Public Health Representative 1
Public Health Representative 3
Quality Assurance Coordinator

Quality Assurance Officer
Research Scientist 1, Microbiology
Research Scientist 1, Microbiology
Research Scientist 2
Research Scientist 2, Microbiology
Senior Clerk Typist
Supervising Public Health Representative
Technical Assistant 2
Technical Assistant 2

CONCLUSION

In State service, *N.J.S.A.* 11A:3-4(l) provides that the unclassified service shall be limited to those titles specifically designated and all other titles as provided by law or as the Commission may determine in accordance with criteria established by rule. *N.J.A.C.* 4A:3-1.1(a) provides that all job titles shall be allocated to the career service, except for those job titles allocated by the Civil Service Commission (Commission) to the unclassified service pursuant to *N.J.A.C.* 4A:3-1.3. *N.J.A.C.* 4A:3-1.3(a) provides that a title shall be allocated to the unclassified service when:

- 1) In State service, the title is so designated under *N.J.S.A.* 11A:3-4;
- 2) In local service, the title is so designated under *N.J.S.A.* 11A:3-5;
- 3) The title is designated unclassified by another specific statute;
- 4) A specific statute provides that incumbents in the title serve for a fixed term or at the pleasure of the appointing authority; *or*
- 5) The Commission determines that it is not practicable to determine merit and fitness for appointment in or promotion to that title by examination and that it is not appropriate to make permanent appointments to the title.

Our courts have recognized the State's strong public policy, as evinced by the State Constitution, favoring the inclusion of as many titles as possible in the career service. *See, Walsh v. Department of Civil Service*, 32 *N.J. Super.* 39, 43-44 (App. Div. 1954); *Loboda v. Clark Township*, 40 *N.J.* 424, 434 (1983); *State v. Clark*, 15 *N.J.* 334, 341 (1954); *In the Matter of Hudson County Probation Department*, 178 *N.J. Super.* 362, 371 (App. Div. 1981).

In the instant matter, there is no question that the titles requested by Agency Services are not specifically designated by *N.J.S.A.* 11A:3-4, nor is there specific statutory authority for unclassified appointments to these titles. Likewise, there is

no statutory provision allowing for the appointment of an incumbent in the title to serve for a fixed term or at the pleasure of an appointing authority. Therefore, it is necessary to evaluate this matter under *N.J.A.C. 4A:3-1.3(a)5*, which specifies that the Commission may allocate a title to the unclassified service if it is not practicable to determine merit and fitness for appointment in or promotion to that title by examination and that it is not appropriate to make permanent appointments to the title.

It has been the established practice of this agency to administer separate examinations for each competitive title within a title series. As such, for each examination, this agency issues either an open competitive or promotional announcement, reviews the resultant applications that are received to determine eligibility to compete in the examination, develops and conducts an examination, issues eligible lists ranking those candidates who passed the examination, and certifies the eligible list so that an appointing authority can consider interested eligibles for appointment. While this methodology is clearly consistent with the constitutional and statutory mandate to select and advance employees on the basis of merit and fitness, it cannot be ignored that this process can take several months to complete. Additionally, it was anticipated that the interim Public Health Recovery Division would phase down no later than November 30, 2022, and now, with the expansion award, it is anticipated that that the interim Public Health Recovery Division would phase down no later than December 30, 2025. Given the immediate need for the DOH to make appointments in order to meet strict timelines mandated for the administration of the federal funds it has been granted and the fact that the Public Health Recovery Division will be phased down by December 30, 2025, the Commission finds that it would not be practicable to determine merit and fitness for appointment nor make permanent appointments to the titles utilized by the interim Public Health Recovery Division.

Additionally, the Commission notes that in accordance with *N.J.S.A. 11A:3-6*, a public hearing is required when moving a title from the career to the unclassified service. However, the titles at issue are *not* to be considered unclassified except for the specific positions utilized in the interim Public Health Recovery Division. As such, a public hearing is not necessary. Nevertheless, the DOH is directed to ensure that all of the appointees to positions within its interim Public Health Recovery Division are advised that their appointments are in the unclassified service and that they are not entitled to the tenure protections provided under Civil Service law and rules.

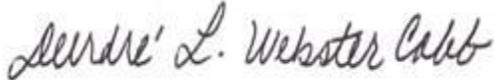
Finally, the Division of Agency Services is authorized to review and approve future requests that may occur for unclassified appointments to career service titles in addition to the titles listed above, as deemed appropriate for the DOH, to assist in the staffing efforts for disaster recovery.

ORDER

Therefore, it is ordered that this request be granted and that the titles listed, as well as any other titles needed to staff positions in the Department of Health's interim Public Health Recovery Division, be designated as unclassified. The Department of Health is to ensure that all of the appointees to positions within its interim Public Health Recovery Division are advised that their appointments are unclassified and that they will not be entitled to the tenure protections of Civil Service law and rules.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 17TH DAY OF NOVEMBER 2021



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